

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JESUS LEBRON,

Petitioner,

v.

05-CV-1370

MIKE McGINNIS,

Respondent.

**THOMAS J. McAVOY,
Senior United States District Judge**

DECISION & ORDER

I. INTRODUCTION

Petitioner Jesus Lebron ("Petitioner"), acting *pro se*, petitions the Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to the Hon. David R. Homer, United States Magistrate Judge, for a Report-Recommendation and Order pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). The Report-Recommendation and Order, dated April 1, 2010, recommended that the petition for a writ of habeas corpus be denied. See Rep. Rec. & Order [dkt. # 21].

Petitioner filed objections to Magistrate Judge Homer's Report-Recommendation and Order, see Objections [dkt. # 23], and Respondent filed a letter brief in support of the Report-Recommendation and Order, dated April 5, 2010. See Letter Brief in Support ("Respondent's Letter Brief") [dkt. # 22].

II. STANDARD OF REVIEW

When objections to a magistrate judge's report and recommendation are lodged, the district court makes a “*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” See 28 U.S.C. § 636(b)(1)(C). General or conclusory objections, or objections which merely recite the same arguments presented to the magistrate judge, are reviewed for clear error. Farid v. Bouey, 554 F. Supp. 2d 301, 306 n.2 (N.D.N.Y. 2008); see Frankel v. N.Y.C., 2009 WL 465645 at *2 (S.D.N.Y. Feb. 25, 2009).¹ After reviewing the report and recommendation, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.” 28 U.S.C. § 636(b)(1)(C).

III. DISCUSSION

Petitioner's objections to the Report-Recommendation and Order involve, for the most part, procedural arguments regarding the timeliness of Petitioner's application for

¹ The Southern District wrote in Frankel:

The Court must make a *de novo* determination to the extent that a party makes specific objections to a magistrate's findings. United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir.1997). When a party makes only conclusory or general objections, or simply reiterates the original arguments, the Court will review the report strictly for clear error. See Pearson-Fraser v. Bell Atl., No. 01 Civ. 2343, 2003 WL 43367, at *1 (S.D.N.Y. Jan. 6, 2003); Camardo v. Gen. Motors Hourly-Rate Employees Pension Plan, 806 F.Supp. 380, 382 (W.D.N.Y.1992). Similarly, “objections that are merely perfunctory responses argued in an attempt to engage the district court in a rehashing of the same arguments set forth in the original [papers] will not suffice to invoke *de novo* review.” Vega v. Artuz, No. 97 Civ. 3775, 2002 WL 31174466, at *1 (S.D.N.Y. Sept. 30, 2002).

2009 WL 465645, at *2.

habeas relief, and general substantive arguments that were presented to Magistrate Judge Homer. Having reviewed those arguments and the Report-Recommendation and Order, and notwithstanding Petitioner's objection addressed to the timeliness of his Petition, the Court finds no clear error in the findings of Magistrate Judge Homer regarding the substantive portion of Petitioner's claim. Accordingly, the Court adopts the substantive portions of the Report-Recommendation and Order, see Rep. Rec. & Order pp. 6-13, and the Petition is dismissed for these reasons.

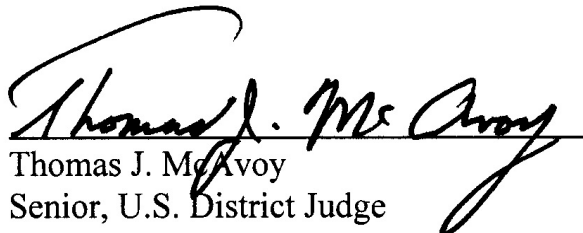
IV. CONCLUSION

Having reviewed Judge Homer's Report-Recommendation and Order, Petitioner's objections, and Respondent's Letter Brief, the Court adopts Magistrate Judge Homer's Report-Recommendation and Order for the reasons stated therein and as addressed above. Accordingly, it is hereby

ORDERED that the petition for a writ of habeas corpus is **DENIED**, and the petition is **DISMISSED**. Because Petitioner has failed to make a substantial showing of a denial of a constitutional right, this Court will not issue a certificate of appealability.

IT IS SO ORDERED

Dated: June 25, 2010


Thomas J. McAvoy
Senior, U.S. District Judge